

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:) CASE NO. 10-93904-BHL-11
)
EASTERN LIVESTOCK CO., LLC,)
)
Debtor.)
)

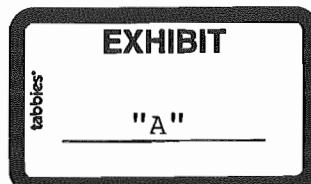
AFFIDAVIT OF ERNEST E. COPENHAVER, JR.

COMMONWEALTH OF VIRGINIA)
) ss:
COUNTY OF WASHINGTON)

Ernest E. Copenhaver, Jr., being first duly sworn upon his oath, states as follows:

1. I am making this affidavit based upon personal knowledge (except where stated on information and belief), I am over 18 years of age, and I am competent to testify to all of the matters stated in this affidavit.

2. I am the Vice President and Regional Supervisor for Agricultural Lending of The First Bank & Trust Company ("First Bank"), located at 18528 Lee Highway, Abingdon, Virginia. First Bank had a lending relationship with Thomas P. Gibson and Patsy M. Gibson (jointly, "Gibsons") of New Albany, Indiana. I am the primary account manager for First Bank's lending to the Gibsons, and have been the primary account manager since First Bank started lending to the Gibsons.



3. First Bank loaned money directly to the Gibsons for the purchase of cattle that would be shipped to various farms or feedlots. Thomas Gibson would take title to such cattle personally and arrange for their care and feeding. Among other security interests for such transactions, First Bank would take a purchase money security interest in all cattle that Thomas Gibson purchased with First Bank's money. First Bank's lending relationship with the Gibsons is evidenced by a valid note, security agreement and perfected by appropriate UCC filing. First Bank's perfected security interest in this lending relationship with the Gibsons included not only purchase money interest in cattle, and products, and proceeds thereof, but also all accounts such as cash, accounts receivable, and commodity accounts.

4. First Bank would lend money for the Gibsons' purchase of cattle only upon First Bank's receipt of an invoice or invoices from the Gibsons as evidence of such a purchase that would specify the total and average weight of the cattle, number of head of cattle purchased, and the location of the farm or feedlot to which the cattle were shipped. Upon receipt of an invoice or invoices relating to the Gibsons' purchase of cattle, First Bank would transfer funds electronically into the Gibsons' account with First Bank in an amount corresponding to the purchase price from the invoice or invoices, which would allow the Gibsons to write drafts as purchase money for such cattle.

5. On a regular basis, I would obtain from the Gibsons an inventory report that would provide (among other information) the location, number of head, weight, and lot number of all cattle financed by First Bank. I traveled to each location listed on a current inventory report to make sure that First Bank was fully secured, by

confirming that the cattle listed on the inventory report corresponded to the cattle located at a particular farm or feedlot for the cattle that the Gibsons financed through First Bank.

6. From approximately September 26, 2010 to September 30, 2010, I traveled to each location listed on an inventory report dated September 23, 2010 ("September Inventory Report") that related to cattle purchased by the Gibsons and financed by First Bank. I was able to confirm that the cattle listed on the September Inventory Report were located at their respective farms and feedlots listed on the September Inventory Report.

7. From approximately November 11, 2010 to December 14, 2010, I conducted additional inspections of the cattle that were financed by First Bank, using an inventory report dated November 4, 2010 ("November Inventory Report"). These inspections resulted in the discovery that approximately 8,000 cattle financed by First Bank were missing, as these cattle could not be found at the locations specified on the November Inventory Report. I have reasonable suspicion that these cattle were transported to other farms or feedlots, sold, slaughtered, or are currently being prepared for slaughter without proper recognition of First Bank's security interest.

8. In preparation of this affidavit, I have reviewed the following information: (1) inventory reports that were prepared by the Gibsons relating to cattle in which First Bank has a security interest; (2) invoices submitted by the Gibsons to First Bank, as described above in paragraph 4; (3) East-West Trucking Log Sheets; and (4) documentation attached to the three complaints in the interpleader action styled

Friona Industries, LP v. Eastern Livestock Co., LLC, No. 2:10-cv-00266-J, in the United States District Court for the Northern District of Texas.

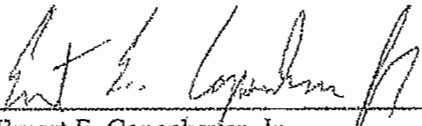
9. The inventory reports and invoices I reviewed are accurate copies of records maintained by First Bank, which were regularly prepared and provided to First Bank by the Gibsons as part of the lending relationship between First Bank and the Gibsons. These invoices and inventory reports were kept in the course of the regularly conducted business activities of First Bank. The invoices are records of or supporting documentation for the amounts for which First Bank financed the Gibsons' purchases of cattle, for the amounts and cattle specified in each invoice. The inventory reports are records of First Bank that were prepared regularly by the Gibsons to reflect the cattle financed by First Bank at a particular moment in time, contemporaneous with the date on which each inventory report was prepared. With regard to the East-West Trucking Log Sheets, I obtained these log sheets from First Bank's counsel, who obtained them from Michael J. Walro, Trustee of East-West Trucking Co., LLC ("East-West Trucking"), Bankruptcy Case No. 10-93799-BHL-7. Upon information and belief, the East-West Trucking Log Sheets were created contemporaneously with each shipment of cattle made by East-West Trucking.

10. I make the following statements in this paragraph on information and belief. Based on a preliminary review of available documentation (including the documentation listed in paragraph 8), First Bank has an interest in at least some of the cattle that were shipped to locations owned or controlled by Friona Industries, LP, Cactus Growers, Inc., and J&F Oklahoma Holdings, Inc. (including JBS Five Rivers or any of its affiliated entities). For example, on November 4, 2010, 80 heifers were shipped from

Glasgow, Kentucky to Friona, Texas, according to the East-West Trucking Log Sheets, Sheet No. 131, Line 59 (attached as Exhibit 1). A transaction involving 80 heifers is also included in the summary document attached to Friona Industries, LP's Complaint in the Nature of Interpleader (attached as an exhibit to its Motion for Relief from Stay filed herein [Doc. No. 78]). Thomas P. Gibson owned cattle that were located in Glasgow, Kentucky on or about November 4, 2010, in which First Bank maintained a security interest as confirmed by my inventory inspection in September. Some of Thomas Gibson's cattle that were later found to be missing were previously located in Glasgow, Kentucky. However, First Bank was not compensated for the 80 heifers shipped from Glasgow, Kentucky to Friona, Texas. Since the inspection I performed in late September, First Bank has roughly 8,000 cattle that it financed that are missing, as these cattle could not be found at the locations specified in the November Inventory Report. Some of these missing cattle were shipped by East-West Trucking, which includes, but is not limited to, shipments to locations owned or controlled by Friona Industries, LP, Cactus Growers, Inc., and J&F Oklahoma Holdings, Inc. (including JBS Five Rivers or any of its affiliated entities). Other missing cattle in which First Bank has a perfected security interest were likely shipped by companies other than East-West Trucking or by independent drivers using East-West Trucking's trailers, the records of which have not been made available to me.


Sworn testimony concluded.

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Ernest E. Copenhaver, Jr.

Before me appeared Ernest E. Copenhaver, Jr., this 6 day of January, 2011, who acknowledged under oath that the above statements are true, except as to those statements expressly made on his knowledge, information and belief.




Notary Public

443119.1

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
1						week of 10/29														
2	Driver	trac	trl	load @	destination	#hd	ld date	mt date	miles	rate	line haul	fsc	total fsc	tot.rev	bill to	on wgt	off wgt	depart	check #	amount
3	D halcomb	4	221	el dorado sp	dahart ?	64st	10/29	10/30	524	2.40	1,257.60	0.60	314.40	1,572.00	elc	48890				
4	W watkins	112	218	batesville ar	ulysses ks	55	10/29	10/30	717	2.40	1,720.80	0.60	430.20	2,151.00	elc					
5	C smith	10	202	atkinson il	wisner ne		10/29	10/30	400	2.40	960.00	0.60	240.00	1,200.00	zine				3492	1,150.00
6	D sells	108	213	richmond ky	gikrest co		10/29	10/30	1235	2.40	2,964.00	0.60	741.00	3,705.00	elc					
7	J mitchell	7	217	ft smith ar	yuma co	64	10/30	10/31	760	2.40	1,824.00	0.60	456.00	2,280.00	elc					
8	C pruet	101	211	ft smith ar	yuma co	67	10/30	10/31	760	2.40	1,824.00	0.60	456.00	2,280.00	elc					
9	J baker	jp4	224	pittsburg	hale center	67	10/30	10/31	523	2.40	1,255.20	0.60	313.80	1,569.00	elc					
10	R vanvactor	104	204	pittsburg	larned ks	557	10/30	10/31	557	2.40	1,336.80	0.60	334.20	1,671.00	elc					
11	C smith	10	202	freemont ne	simpsonville ky		10/31	11/1	763		1,413.30		226.06	1,639.36	burnell				38362	1,639.36
12	J hardwick	106	206	des moines ia	simpsonville ky		10/31	11/1	612		1,145.82		140.86	1,286.68	burnell				38362	1,286.68
13	J pass more	103	212	peoria il	simpsonville ky		10/31	11/1	349		818.04		99.27	917.10	burnell				38362	917.10
14	D halcomb	4	221	hedley tx	greenbay wi		10/31	11/1	1201	1.40	1,681.40	0.27	324.06	2,005.67	elc					
15	K burchett	179	216	kingston tn	swisher tulia	66s	11/1	11/2	1142	2.40	2,740.80	0.60	685.20	3,426.00	elc	49305				
16	J bunch	jp2	205	glasgow ky	hagerstown in	39	11/1	11/2	264	2.40	633.60	0.60	158.40	792.00	collect					
17	N kidd	jp3	210	clarkrange tn	perryton tx	55st	11/1	11/2	1019	2.40	2,445.60	0.60	611.40	3,057.00	elc					
18	D galyean	1656	208	galax va	richmond ky	95	11/1	11/2	340	2.40	816.00	0.60	204.00	1,020.00	elc					
19	Brandon	1657	223	galax va	tulia tx	75	11/1	11/2	1394	2.40	3,345.60	0.60	836.40	4,182.00	elc					
20	G johnson	1658	209	galax va	tulia tx/boise city	90	11/1	11/2	1570	2.40	3,768.00	0.60	942.00	4,710.00	elc					
21	R vanvactor	104	204	buffalo mo	yuma co	59st	11/1	11/2	677	2.40	1,624.80	0.60	406.20	2,031.00	elc					
22	M hooks	178	201	buffalo mo	yuma co	60st	11/1	11/2	677	2.40	1,624.80	0.60	406.20	2,031.00	elc					
23	C smith	10	202	central in	kersey co	62h	11/1	11/2	1139	2.40	2,733.60	0.60	683.40	3,417.00	elc					
24	M bartley	102	215	sweetwater tn	ulysses ks	57s	11/1	11/2	1137	2.40	2,728.80	0.60	682.20	3,411.00	elc	52080				
25	J passmore	103	212	bardstown ky	norfolk ne	56s	11/1	11/2	852	2.40	2,044.80	0.60	511.20	2,556.00	elc	49000				
26	J mitchell	7	217	nevada mo	simpsonville ky		11/1	11/2	563		1,169.22		140.86	1,310.08	burnell				38362	1,310.08
27	J bunch	jp2	205	greensburg	simpsonville ky		11/1	11/2	325		460.05		48.05	517.10	burnell				38362	517.10
28	J hardwick	106	206	central in	kersey co	62h	11/1	11/2	1139	2.40	2,733.60	0.60	683.40	3,417.00	elc					
29	S hart	3	207	central in	hartley ia	65h	11/1	11/2	788	2.40	1,891.20	0.60	472.80	2,364.00	elc	54200				
30	J mitchell	7	217	carthage tn	amarillo tx	64	11/2	11/3	985	2.40	2,364.00	0.60	591.00	2,955.00	elc					
31	W watkins	2	219	carthage tn	amarillo tx	63	11/2	11/3	985	2.40	2,364.00	0.60	591.00	2,955.00	elc					
32	D galyean	1656	208	london	lexington		11/2	11/3	75	2.40	180.00	0.60	45.00	225.00	elc					
33	D halcomb	4	221	jones/burlington	simpsonville ky		11/2	11/3	325	2.40	818.56		99.06	917.62	burnell				38362	917.62
34	S hart	3	207	peoria /congerville	simpsonville ky		11/2	11/3	352	2.40	837.00		99.06	936.06	burnell				38362	936.06
35	Ray	r11	102	sweetwater	amarillo tx	64	11/2	11/3	1104	2.40	2,649.60	0.60	662.40	3,312.00	elc					
36	D sells	108	213	wolf creek mt	polo il	72h	11/2	11/3	1540	2.40	3,696.00	0.60	924.00	4,620.00	kness	50600				
37	D galyean	1656	208	edmonton ky	wisner ne	86	11/2	11/3	1021	2.40	2,450.40	0.60	612.60	3,063.00	elc					
38	Scott golden	1	222	edmonton ky	amarillo tx	68	11/2	11/3	1043	2.40	2,503.20	0.60	625.80	3,129.00	elc					
39	S ponsford	12	203	edmonton ky	wiggins co	95	11/2	11/3	1176	2.40	2,822.40	0.60	705.60	3,528.00	elc					
40	D galyean	1656	208	lex/lanesville	de long il		11/2	11/3	316	2.40	758.40	0.60	189.60	948.00	elc					
41	C smith	10	202	des moines	simpsonville ky		11/3	11/4	612		1,229.28		140.86	1,370.14	burnell				38362	1,370.14
42	R vanvactor	104	204	ireland	simpsonville ky		11/3	11/4	109		343.55		48.05	391.60	burnell				38362	391.60

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S	T
43	d halcomb	4	221	greensburg in	simpsonville ky		11/3	11/4	101		449.30		48.05	497.35	purnell				38362	499.00
44	hardwick	106	206	sioux city/trum	kodak tn	80	11/3	11/5	1193						wiechman					
45	j passmore	103	212	louisville ky	friona tx	79h	11/3	11/4	1254	2.40	3,009.60	0.60	752.40	3,762.00	elc					
46	s hart	3	207	mt st/lex/camp	edmonton		11/3	11/4	160	2.40	384.00	0.60	96.00	480.00	elc					
47	j baker	jp4	224	campbellsville	holland in	79	11/3	11/4	135	2.40	324.00	0.60	81.00	405.00	elc					
48	c smith	10	202	lexington ky	central in	34	11/3	11/4	110	2.40	264.00	0.60	66.00	330.00	elc					
49	d sells	108	212	peoria il	simpsonville ky		11/4	11/5	349		775.20		99.06	874.26	purnell				38362	874.26
50	c smith			joogootee in	simpsonville ky		11/4	11/5	101		433.40		48.05	481.45	purnell				38362	481.45
51	brandon	1657	223	mt vernon tx	dalhart tx	68s	11/4	11/5	531	2.40	1,274.40	0.60	318.60	1,593.00	elc				9817	1,539.00
52	w watkins	2	219	anthony ks	liberal ks	58s	11/4	11/5	207	2.40	496.80	0.60	124.20	621.00	elc					
53	j mitchell	7	207	anthony ks	liberal ks	58s	11/4	11/5	207	2.40	496.80	0.60	124.20	621.00	elc					
54	g johnson	1658	209	jeffersonville in	friona tx	63h	11/4	11/5	1095	2.40	2,628.00	0.60	657.00	3,285.00	elc					
55	morris bartley	102	215	jeffersonville in	friona tx	63h	11/4	11/5	1095	2.40	2,628.00	0.60	657.00	3,285.00	elc					
56	c smith	10	202	louisville ky	friona tx	79h	11/4	11/5	1089	2.40	2,613.60	0.60	653.40	3,267.00	elc					
57	R bryant	r11	102	chouteau ok	ulysses ks	66st	11/4	11/5	440	2.40	1,056.00	0.60	264.00	1,320.00	elc				9804	1,254.00
58	j baker	jp4	224	mitchell in	denville ks	94	11/4	11/5	747	2.40	1,792.80	0.60	448.20	2,241.00	brack brisco					2,241.00
59	c pruet			glasgow ky	friona tx	80h	11/4	11/5	1094	2.40	2,625.60	0.60	656.40	3,282.00	elc					
60	n kidd	jp2	205	dunlap tn	yuma co	67	11/4	11/5	1186	2.40	2,846.40	0.60	711.60	3,558.00	elc				12917	3,558.00
61	k burchett	170	201	dunlap/cooke	yuma co	69	11/4	11/5	1213	2.40	2,911.20	0.60	727.80	3,639.00	elc				12917	3,639.00
62	s hart	3	207	edmonton ky	yuma co	61h	11/4	11/5	1094	2.40	2,625.60	0.60	656.40	3,282.00	elc					
63	d halcomb	4	221	london	plainwell	39	11/4	11/5	460	2.40	1,104.00	0.60	276.00	1,380.00	mw				5021	2,230.00
64									1	2.40	2.40	0.60	0.60	3.00						
65									1	2.40	2.40	0.60	0.60	3.00						
66									1	2.40	2.40	0.60	0.60	3.00						
67									1	2.40	2.40	0.60	0.60	3.00						
68									1	2.40	2.40	0.60	0.60	3.00						
69									1	2.40	2.40	0.60	0.60	3.00						
70									1	2.40	2.40	0.60	0.60	3.00						
71									1	2.40	2.40	0.60	0.60	3.00						